

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

KING MWASI,

Plaintiff,

v.

LUCKEN, *et al.*,

Defendants.

Case No. 1:21-cv-00702-JLT-BAM (PC)

ORDER GRANTING PLAINTIFF'S MOTION
FOR ORDER ON MOTIONS
(ECF No. 72)

ORDER DENYING PLAINTIFF'S MOTIONS
TO REOPEN DISCOVERY AND GRANTING
PLAINTIFF'S MOTIONS TO SET CASE FOR
TRIAL
(ECF Nos. 71, 73)

ORDER SETTING TELEPHONIC STATUS
CONFERENCE

Date: May 13, 2025
Time: 9:30 a.m.

Plaintiff King Mwasi ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff's first amended complaint against Defendants Lucken, Sepeda, and Blanco ("Defendants") for excessive force in violation of the Eighth Amendment.

I. Procedural Background

Following Defendants' notice of their intent not to file a merits motion for summary judgment, the Court directed Plaintiff to file a response indicating whether he intended to file a dispositive motion in this action or whether he also requests that this matter be set for trial. (ECF

Nos. 69, 70.)

On December 2, 2024, Plaintiff filed a motion to extend discovery and a motion to set case for trial. (ECF No. 71.) On March 10, 2025, Plaintiff filed a motion for the Court to issue an order on his previous motion, and re-filed his motion to extend discovery and a motion to set case for trial. (ECF Nos. 72, 73.) Defendants filed an opposition to Plaintiff's motions to extend discovery on March 24, 2025. (ECF No. 74.) Although the deadline for Plaintiff to file a reply brief has not yet expired, the Court finds a reply unnecessary, and the motions are deemed submitted. Local Rule 230(l).

By the instant order, Plaintiff's motion for an order ruling on his motion to extend discovery and motion to set trial is granted. Plaintiff's motion to extend discovery and motion to set trial are discussed below.

II. Plaintiff's Motion to Reopen Discovery

Discovery originally opened in this case on January 19, 2023. (ECF No. 41.) Pursuant to the Court's April 25, 2024 order granting Defendants' request for clarification and lifting the stay of discovery, the deadline for completion of all discovery, including filing all motions to compel discovery, was June 17, 2024. (ECF No. 57.) The discovery deadline in this action was extended three times, twice at Plaintiff's request and once at Defendants' request. (ECF Nos. 46, 50, 54.) All three extensions of the discovery deadline were unopposed.

In his current motion, Plaintiff requests that the Court extend the discovery period for several reasons. (ECF No. 71.) Plaintiff states that there has been a lot of confusion with communication with the assigned defense counsel regarding discovery, as there have been many changes in counsel. Plaintiff alleges that he sent several interrogatories without replies, as well as inquiries regarding his interrogatories, to both prior and new defense counsel, but never received responses. Then, Plaintiff's deposition became the priority without resolving the interrogatory discrepancy, and the deposition was delayed many times, for nearly a year. At his eventual deposition, Plaintiff expressed the need to receive response to his interrogatories and finish discovery. The new DAG said OK, but never sent responses. Two months prior to Plaintiff's motion to extend discovery, Plaintiff received notice that original defense counsel was back on

1 the case, and a month later wrote to defense counsel to arrange a call to discuss the discovery
2 problem and potential settlement. Plaintiff has not received a reply yet. Plaintiff then received
3 the Court's order regarding whether he wishes to set a trial date. Plaintiff states that he wishes to
4 complete discovery and also to schedule a trial as soon as practical. Plaintiff would also like the
5 trial venue to be near his prison location, as for various reasons it is the best situation. If the
6 venue is too far to commute and return to the same institution, transfer would be necessary and
7 would involve a variety of hardships for Plaintiff. Plaintiff requests an extension of discovery of
8 90–120 days.

9 In opposition, Defendants contend that Plaintiff has not shown good cause to reopen
10 discovery. (ECF No. 74.) Plaintiff served three sets of interrogatories on Defendants on June 20,
11 2023, to which Defendants timely responded on August 24, 2023. (ECF No. 74-1 (“Kallberg
12 Decl.”), Exs. A, C.) Plaintiff did not meet and confer with Defendants regarding any deficiencies
13 with these responses, file a motion to compel further responses, or serve any other written
14 discovery requests on Defendants. Plaintiff has not identified what discovery he requires that he
15 was not able to obtain prior to the discovery deadline, why he waited months after the discovery
16 deadline to request a continuance, or why he has been unable to engage in timely discovery.
17 Plaintiff has not been diligent in pursuing discovery in this matter.

18 **A. Legal Standard**

19 When ruling on a motion to amend a Rule 16 scheduling order to reopen discovery, the
20 Court must consider the following factors:

21 1) whether trial is imminent, 2) whether the request is opposed, 3) whether the
22 non-moving party would be prejudiced, 4) whether the moving party was diligent
23 in obtaining discovery within the guidelines established by the court, 5) the
24 foreseeability of the need for additional discovery in light of the time allowed for
discovery by the district court, and 6) the likelihood that the discovery will lead to
relevant evidence.

25 *City of Pomona v. SQM N. Am. Corp.*, 866 F.3d 1060, 1066 (9th Cir. 2017).

26 **B. Analysis**

27 Under these factors, Plaintiff's motion must be denied. Although trial has not yet been
28 scheduled, both parties have requested that the Court set a trial date as soon as practicable. Aside

1 from Plaintiff's request to conduct further discovery, the parties appear in agreement that no
2 dispositive motions will be filed and the case is therefore ready to proceed to trial. Defendants
3 have opposed Plaintiff's request to reopen discovery.

4 The remaining factors all also weigh against reopening discovery. Although Plaintiff was
5 diligent in serving interrogatories on Defendants in June 2023, Plaintiff has not shown that he was
6 diligent in pursuing discovery during the following year that discovery was open. Plaintiff
7 alleges that he sent several interrogatories and other inquiries with no responses, but Plaintiff has
8 not provided any copies of those requests, dates of service, or other information that would
9 support his allegations. It is also unclear whether Plaintiff is referencing the same June 2023
10 interrogatories to which Defendants served responses in August 2023. If Plaintiff is alleging that
11 he never received Defendants' August 2023 responses to his interrogatories, he provides no
12 explanation for his failure to inform the Court, through a motion to compel or otherwise, that he
13 did not receive those responses. Assuming Plaintiff never received those responses, Plaintiff
14 should have foreseen the need to file a motion to compel since July or August 2023, and had
15 nearly a year to file his motion. Plaintiff did not do so. Plaintiff also fails to provide an
16 explanation for his failure to request a further extension of the June 17, 2024 discovery deadline
17 until December 2, 2024, nearly six months after that deadline expired. Therefore, the Court finds
18 that Plaintiff has not been diligent in obtaining discovery since serving his June 2023
19 interrogatories.

20 Finally, the Court finds that Defendants will be prejudiced if discovery is reopened, both
21 due to the likely delay of trial and the unlikelihood that the requested discovery will lead to
22 relevant evidence. As noted above, Defendants already served responses to Plaintiff's June 2023
23 interrogatories, and Plaintiff has not identified what additional discovery he seeks. Reopening
24 discovery at this late date, for the purpose of allowing Plaintiff to seek discovery responses that
25 were already served or to seek discovery of an unspecified nature would cause an unnecessary
26 delay.

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III. Plaintiff's Motion to Set Case for Trial

Plaintiff's motion to set this case for a trial date is granted. As noted above, the parties have both indicated that they wish to set a trial date as soon as practicable, and no dispositive motions were filed.

To the extent Plaintiff requests a trial venue near to his prison location, the Court construes this as a request for a transfer of venue, and the request is denied. "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented." 28 U.S.C. § 1404(a). "A civil action may be brought in—(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; [or] (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred" 28 U.S.C. § 1391(b). The party seeking the transfer must meet an initial threshold burden by demonstrating that the action could have been brought in the proposed transferee district. 28 U.S.C. § 1391(b); 28 U.S.C. § 1404(a); *Hatch v. Reliance Ins. Co.*, 758 F.2d 409, 414 (9th Cir. 1985); *Park v. Dole Fresh Vegetables, Inc.*, 964 F.Supp.2d 1088, 1093 (N.D. Cal. 2013).

Plaintiff has provided no argument that would support the transfer of this action to any other district, aside from unspecified hardships that he would suffer if he was transferred from his current institution. This is not sufficient to justify a transfer of this action to another district. Plaintiff is currently housed at the San Quentin Rehabilitation Center, which is located in the Northern District of California. The events in the complaint occurred while Plaintiff was housed at North Kern State Prison, which is located in the Eastern District of California. Plaintiff has provided no argument that the case could have been brought in the Northern District of California, and Defendants have not consented to transfer of the action to any other district. The request is therefore denied.

IV. Telephonic Status Conference

Based on the above, the Court finds that this case is now ready to be set for a jury trial on Plaintiff's claims against Defendants Lucken, Sepeda, and Blanco for excessive force in violation

of the Eighth Amendment.

The Court will set a telephonic status conference for May 13, 2025, at 9:30 a.m. to discuss setting the relevant deadlines and trial date before District Judge Jennifer L. Thurston. The parties should also be prepared to discuss whether another settlement conference may be fruitful.

V. Order

Accordingly, IT IS HEREBY ORDERED as follows:

1. Plaintiff's motion for order on pending motions, (ECF No. 72), is GRANTED, as discussed above;
2. Plaintiff's motion to extend discovery period, (ECF Nos. 71, 73), is DENIED;
3. Plaintiff's motion to set case for trial, (ECF Nos. 71, 73), is GRANTED;
4. A telephonic status conference is set for **May 13, 2025, at 9:30 a.m.** before the undersigned in Courtroom 8 (BAM);
5. The parties shall appear **telephonically (via Zoom)**;
6. Defense counsel shall contact Courtroom Deputy, Esther Valdez, at (559) 499-5788 or evaldez@caed.uscourts.gov for the Zoom dial-in information for all parties;
7. **Defense counsel is required to arrange for Plaintiff's participation by contacting the Litigation Coordinator at the institution where Plaintiff is housed to provide the necessary dial-in information and confirm whether the institution is able to produce Plaintiff for a telephonic appearance at the scheduled date and time;**
8. If the institution is unable to produce Plaintiff for a telephonic appearance at the scheduled date and time, defense counsel shall so inform the Court by no later than **April 11, 2025;** and
9. The Court will issue any necessary transportation writ in due course.

IT IS SO ORDERED.

Dated: **March 27, 2025**

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE